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## *Via Electronic Filing*

Marlene H. Dortch, Secretary

Federal Communications Commission

445 12<sup>th</sup> Street, SW

Washington, DC 20554

**Re: Ex Parte Presentation**

**WT Docket No. 06-150 CC Docket No. 94-102 WT Docket No. 01-309**

Dear Ms. Dortch:

On behalf of Aloha Partners, L.P. ("Aloha"), we write to address the issue of power limits for the Lower Band 700 MHz spectrum.

In the Commission's NPRM in the captioned proceeding, a question was posed regarding whether the Commission should revise the 50kW ERP power limit that applies to base stations operating in the Lower 700 MHz Band. NPRM, 21 FCCR 9345, 9388 (2006). Comments were sought (a) regarding whether any demand exists for such high powered transmissions, and the impact that any reduction in power would have on such demand; (b) if there was a reduction in permissible power, what should the new limits be; (c) if there are any new limits, should they apply to spectrum yet to be auctioned, or to both newly auctioned and previously auctioned spectrum; and (d) what, if any, additional modifications to existing power rules are appropriate? Id.

Aloha provided the Commission with comments on many of the above questions, in both comments and reply comments submitted in the captioned proceeding. See Aloha's comments filed on September 29, 2006 and its Reply Comments filed on October 20, 2006. By those submissions, Aloha explained that 700 MHz licensees should be governed by the very same power measurement mechanics as those to be determined in WT Docket 03-264 – the 2002 Biennial Review, where a clear consensus of the wireless industry advocated power calculations based upon power flux density and average, rather than peak, power. Aloha Comments, at 11. Aloha also urged that permissible power in the 700 MHz band be maintained or increased. Aloha Reply Comments at 4.

Many other commenting parties shared Aloha's position regarding permissible power limits. For example, Motorola, Inc. urged that the 50 kW limit be maintained. Motorola Comments, at 9-11. QUALCOMM explained that, when existing 50 kW limit was established, the Commission affirmatively determined that such limit would "promote and maximize flexibility to the extent practical by allowing the great number of services to exist," and that there is no reason to change now. QUALCOMM Comments, at 22.

CTIA properly observed that "the technical merits of [existing] limits were vetted in earlier proceedings" and it also saw no reason to change them here. CTIA Comments, at 20.

With respect to the "need" for a power limit of at least 50 kW, such limit is needed in order to make mobile video television offerings a reality. QUALCOMM's affiliate MediaFlo has based its entire offering on that permissible power limit. Aloha is similarly situated. The need for significant permissible power for this type of offering was recently demonstrated by the Commission's recent determination to grant a substantial (twenty fold) power increase to a third carrier reported to be offering mobile television services. See OP LLC, Memorandum Opinion and Order; FCC 07-16 (rel. Feb. 26, 2007). Any reduction in permissible power would result in a reduction in operating efficiencies and a corresponding reduction in service offering appeal. .

There are other reasons why Lower Band 700 MHz power limits must be retained, or increased. First, different parts of the band have been, or will be, licensed at different times. The C and D Blocks were licensed in 2002 and 2004, and remaining portions will be licensed within the next year. The Commission cannot modify permissible power limits on currently licensed system without triggering the obligations of Section 312 of the Act. Moreover, any after-the-fact reduction in authority for those who have paid for their license rights would undermine the integrity of the Commission's entire auction process.

Any prospective-only, reduction in permissible power for to-be-licensed spectrum would be equally problematic. It would be unworkable for licensees who have acquired certain spectrum in prior auctions and who acquire more spectrum in future auctions to have to operate different parts of a unified system under different regulatory regimes. Similarly, all manner of competitive issues would arise were certain licensees in one band to be subject to certain regulation and other licensees in the very same band – and who likely would compete with each other – be subject to significantly different regulatory constraints. Most certainly, none of these dichotomies would pass scrutiny of a reviewing court absent the existence of a meaningful factual and legal predicate that is not here present.

Respectfully Submitted,  
ALOHA PARTNERS, L.P.

/s/

Thomas Gutierrez  
*Counsel for Aloha Partners, LP*